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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 459

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, *Petitioner,*

v.

FEDERAL POWER COMMISSION, ET AL., *Respondents.*

No. 473

THE UNITED GAS IMPROVEMENT COMPANY, ET AL., *Petitioners,*

v.

FEDERAL POWER COMMISSION, ET AL., *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENT TRANSCONTINENTAL GAS PIPE LINE CORPORATION IN OPPOSITION

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BRIEF FOR RESPONDENT TRANSCONTINENTAL GAS PIPE LINE CORPORATION IN OPPOSITION

QUESTIONS PRESENTED

1. Is the record in *Atlantic Refining Co. et al.* v. *Public Service Commission of New York*, 360 U.S. 378 (1959)[1] so identical with the record supporting the Federal Power Commission's order of September 4,

[1] Hereinafter sometimes referred to as the *Cato* decision.

1958 here under review[2] that the Court of Appeals (which itself had previously heard the *Catco* case and on the basis of that record reversed the Commission)[3] committed reversible error in here affirming the Commission?

2. Did the Federal Power Commission fail to give "a most careful scrutiny and responsible reaction to initial price proposals of producers"[4] where it was fully advised by substantial evidence of record (1) that the ultimate consumers served by the pipeline company needed over 160 million cubic feet per day of additional gas supply within 90 days of the Commission's final order, which requirements could not be served out of the pipeline company's old gas reserves; (2) that the pipeline company had to undertake and complete within ninety days an enormous construction program if it were to be able to attach the required new gas supplies and begin winter service within that time (Transco expended approximately $100,000,000 on authorized facilities in 1958); (3) that this construction period would be wiped out if any attempt was made to hold further hearings in the certificate proceedings regarding the proposed initial prices of the 26 separate and distinct independent producer companies involved; (4) that the pipeline company had

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[2] 20 FPC 264 (1958); R. 10,333. Hereinafter sometimes referred to as the *Transco-Seaboard* case, after the names of the pipeline company applicant in Docket No. G-13143 and the producer applicant in Docket No. G-13169. The decision of the Court below, affirming the Commission order of September 4, 1958, is identified as United Gas Improvement Company v. Federal Power Commission, 269 F. 2d 865 (3d Cir. 1959).

[3] Public Service Commission of New York v. Federal Power Commission, 257 F. 2d 717 (3d Cir. 1958).

[4] 360 U.S. 378, 391 (1959).

been unable to contract for new gas supplies at its old contract price; and (5) that the proposed producer prices would not establish a new price plateau?

STATEMENT OF THE CASE

1. The Order Under Review and Its Consequences.

Under the order of the Federal Power Commission (Commission) which is before this Court for review, Transcontinental Gas Pipe Line Corporation (Transco) received authorization to expand its transmission facilities at an estimated cost of $147,000,000,[5] to undertake additional peak day sales of 176,515,000 cubic feet to its customers,[6] to provide a new storage service from the Leidy Storage Field in Pennsylvania of 191,000,000 cubic feet per day[7] and to develop the Leidy Storage Field for this purpose in cooperation with two other companies.[8] The customers receiving the new service (including Petitioners in No. 473) are identified on Appendix A, hereto. The locations of the 970 miles of pipelines and 14,500 horsepower of compression authorized by this order are shown on the map which is Appendix B, hereto.

To provide the gas supply necessary for this project, 26 independent producers were authorized in 38 different dockets[9] to sell natural gas to Transco from

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[5] Docket Nos. G-13143, G-13590, G-13745, G-13793. This was Transco's *1958* expansion program. See footnote 19, *post*.

[6] Docket Nos. G-13590, G-13745. Also ten billion cubic feet per year to one customer.

[7] Docket No. G-13590.

[8] Docket No. G-13793.

[9] Docket Nos. G-13169, *et al.* The independent producer applicants are identified at R. 9757-9761. There were originally 39 applications; one was withdrawn. (R. 9758)

reserves estimated by the Commission to contain 2 trillion cubic feet of gas located in 25 different fields scattered over an area of South Louisiana and the Gulf of Mexico exceeding 15,000 square miles in extent. Petitioners are attacking in this Court only that part of the order of September 4, 1958 issuing certificates of public convenience and necessity to these producers.

Most of the 1958 construction season had passed by the time the Commission issued its order on September 4, 1958. However, by herculean effort Transco installed sufficient additional facilities during the remainder of 1958 to be able to initiate needed additional peak day winter deliveries of 167 million cubic feet per day to its customers during the first ten days of December, 1958, *ninety days after the Commission's order was issued.* Transco expended approximately $100,000,000 in constructing authorized facilities in 1958.

With the return of element weather in 1959, Transco continued construction of the authorized facilities. By November 1, 1959, Transco was providing service authorized by the order here under review to all but one customer;[10] had expended over $140,000,000 on authorized facilities, and had connected its pipeline system with 21 of the 25 fields[11] containing the estimated two trillion cubic feet of authorized additional gas supplies. In the meantime, these new gas reserves

[10] Service to New York State Natural Gas Corporation is not proposed to begin before January 1, 1960, as originally scheduled.

[11] Block 72, 113 and 20 fields located offshore Terrebonne Parish will not be connected to Transco's system until the summer of 1960 at the earliest. Habenville field, St. Charles Parish, has been abandoned because the gas reserves are insufficient to warrant construction of gathering facilities.

have come to play an additional vital role. By November 1, 1959, Transco had initiated additional peak day sales of almost 130 million cubic feet to its customers under authorization issued by the Commission in Docket No. G-16603, Transco's *1959* expansion program.[12] The customers receiving this new service are identified on Appendix C, hereto. *As the gas supplies from the 25 fields represent almost 25% of the total gas reserves contractually dedicated to Transco* (R. 5188), *the continuation of winter-time deliveries of 500 million cubic feet per day, initiated last winter and this November to millions of gas consumers from Alabama to New York City, is placed in jeopardy by Petitioners' efforts before this Court to reverse the Commission.*

In the event that this Court vitiates the certificates of public convenience and necessity issued by the Commission to the 26 different producers and remands these matters to the Commission, it seems clear that the producers in Blocks 72, 113 and 20 fields[13] will be under no obligation to make any sales to Transco from those fields except in accordance with their contracts.[14] It is not entirely clear that the producers who have already commenced service will be obliged to continue their present sales to Transco should the Commission ultimately issue certificates of public convenience and necessity to such producers containing terms and conditions substantially different from those set out in

[12] This service was first authorized by temporary orders of the Commission issued January 9, 1959 and October 16, 1959. Transco received final authorization by order issued November 17, 1959.

[13] See footnote 11, *supra*.

[14] Atlantic Refining Co. *et al.* v. Public Service Commission of New York, 360 U.S. 387, 388 (1959).

the certificates here under review and which have been accepted by the producers.[15]

2. The Factual Background

Transco is the pioneer supplier of natural gas to New York City. Its pipeline, constructed in 1949 and 1950, begins in south Texas, parallels the Gulf Coast to Alabama, then turns north along the eastern slopes of the Appalachians to its principal market in metropolitan New York, New Jersey and Philadelphia. See Appendix B, hereto. It supplies 66 utilities and municipalities at wholesale who in turn serve more than 20,000,000 gas consumers. While some of its customers have more than one source of natural gas,[16] Transco serves 55 wholesale customers (most of them small municipalities south of the Potomac River) who depend entirely upon Transco for their natural gas requirements. (R. 5287-5290)

Transco, for all practical purposes, has no production of its own.[17] It acquires its gas supplies from independent producers under long term contracts. The gas reserves involved in this appeal were contracted for in 1957 and early 1958. At that time, the only place where Transco could obtain substantial additional volumes of gas which its customers required was in its

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[15] *Ibid.*

[16] Among the customers which have at least two pipeline suppliers are the petitioners in No. 473, the four customers of Transco regulated by the New York Commission (petitioner in No. 459) in 1958 and the Public Service Company of New Jersey which has filed a brief herein in support of petitioners.

[17] The gas supplies produced by Transco from its own reserves in 1958 would have met the pipeline's requirements for about five hours.

south Louisiana "shopping area" which embraces the parishes in southern Louisiana between the Mississippi and Sabine Rivers and offshore areas in the Gulf of Mexico adjacent thereto. (R. 2627)

As early as the winter of 1956-1957 Transco had under consideration an expansion program to satisfy additional market requirements on its system of approximately 200,000,000 cubic feet per day in the winter of 1958-1959, and an additional 100-150,000,000 cubic feet per day in the winter of 1959-1960. (R. 2630) This was in no sense a market "created" by Transco. It simply was the anticipated demand for natural gas of millions of consumers.

Transco was unable to acquire additional gas reserves for this program at 17¢ per Mcf, the price in its earlier gas purchase contracts and the price which two of the petitioners[18] recommended be attached by the Commission as a condition to the independent producers' certificates. (R. 2630) This is not surprising because at least 120 contracts had been executed by various south Louisiana producers and other pipeline company purchasers in this area at prices in excess of 17¢ between November 1953 and July 29, 1957, the date on which Transco executed the first of the gas purchase contracts which are involved in this proceeding. (R. 2629; see also R. 6913-6926, 10,428).

Stalemated in its gas acquisition program, Transco was obliged to reconsider its gas purchase policy. After exhaustive study of the situation, the Company

[18] The New York Commission and The United Gas Improvement Company recommended 17¢. Philadelphia Electric Company recommended 9.79¢.

authorized its gas supply department to proceed to negotiate new gas purchase contracts at competitive levels in order to acquire reserves which would both satisfy the Company's anticipated additional market requirements during the subsequent two years and restore the pipeline's existing reserve inventory to a satisfactory level. (R. 2630)

Transco kept all of its major customers advised of its gas acquisition program and policy and of the fact that it had to raise the price it would offer for new gas reserves. (R. 2633)

Transco's expansion programs have followed a pattern over the past several years which was repeated in the case now before this Court. In the fall of the year Transco files the necessary certificate applications seeking authorization to expand its system capacity and to undertake new and enlarged service the following fall. Each annual program is identified by the year in which all or most of the facilities are to be constructed and the new service undertaken.[19] Assuming the Commission can hear and dispose of the

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[19] Transco has methodically expanded its system to meet the normal growth of the natural gas market which it serves:

Progam	FPC Docket	FPC Authorization	Authorized Increase in Plant	Increase in Peak Day Service
1955	G-4185	14 FPC 1	$ 48,205,000	92,722 Mcf
1956	G-10000	17 FPC 360	$ 50,858,000	124,644 Mcf
1957	G-12059	18 FPC 710	$ 51,600,000	114,078 Mcf
1958	G-13143	20 FPC 264	$147,000,000	367,515 Mcf
1959	G-16503	22 FPC —*	$ 76,910,000*	138,589 Mcf
1960	G-20107	**	$ 51,687,000**	108,823 Mcf**

* By order issued November 17, 1959, the Commission authorized Transco to undertake all of the proposed service and to construct approximately $53,000,000 of the proposed new facilities. The Commission severed for later decision the question of authorizing the balance of the proposed new plant.

** Filed with the Commission on November 12, 1959.

application by late spring (seven months after filing), this gives Transco only the summer and early fall for construction of required transmission facilities.

The filing date of the application is governed in large measure by the date by which the utility customers are able to specify the additional volumes they need, because substantial changes in market demands require re-engineering the project and recomputing its economics. The customers are asked at least 18 months before the new service is to begin how much additional gas they need. Understandably, the customers wish to defer the execution of precedent agreements relating to the additional service until the last minute because the new service will be provided under a twenty-year contract.

3. The Proceedings Before the Commission

In the case before this Court, which involves its *1958* expansion program, Transco filed its principal application with the Commission in October 1957.[20] (R. 7348-7738) The 39 independent producer applications upon which Transco relied were filed between August 1957 and February 1958.

As late as December 1957 some of Transco's customers had altered the volumes they desired from the expansion program. (R. 7957-7960) Transco was required to amend its project in January 1958 to reflect the last minute details of one of its customers' projects. (R. 8132-8542)

This left little time before construction had to begin. The expansion program required construction of more

[20] Docket No. G-13590. The application in Docket No. G-13143 which was filed earlier (August, 1957 involved gathering lines

than 970 miles of pipelines, 14,500 horsepower of compression and the development of a storage field. The total estimated cost was approximately $147,000,000.[21] (R. 3025) Transco advised the Commission that it needed authorization to commence construction by June 1, 1958 if it were to be ready by November 1, 1958 to begin the new service. (R. 473-479)

The Commission was then, as now, heavily burdened with a multitude of Section 4 and Section 5 rate cases,[22] and hundreds of other certificate applications. Beginning in December 1957, Transco and its customers urged the Commission to set the matter down for early hearing. (R. 7998, 8630) After hearings began on March 10, 1958, Transco and its customers urged the Presiding Examiner and the Commission to take all lawful measures to expedite the hearing and to issue an early order. (R. 267, 9038, 9498, 9605, 9665)

When it became evident that the hearings would not be completed in time, Transco applied for temporary authorization to commence the storage segment of its project.[23] (R. 9336, 9387, 9468) This was denied, apparently because of the questions being raised by the New York Commission, The United Gas Improvement Company (UGI) and Philadelphia Electric Company

[21] In its order of September 4, 1958 here under review, the Commission deferred consideration of other facilities estimated to cost an additional $20,000,000. (R. 10,371)

[22] Section 4 rate cases are entitled by law to preference over all other questions pending before the Commission. 15 U.S.C. § 717c.

[23] Docket No. G-13793 involved development of the storage pool. Docket No. G-13590 related, *inter alia*, to the transmission line to the pool.

(Philadelphia Electric) in Docket Nos. G-13169, *et al.*, as to the initial prices in the independent producer contracts. (R. 9598)

A full, complete and uncontroverted record was made before the Presiding Examiner demonstrating (1) the immediate need of Transco's customers for additional gas supplies commencing with the 1958-1959 heating season and (2) the fact that Transco could not provide such service without the additional gas supplies to be obtained from the 26 producer applicants. In contrast to the complete absence of evidence of market needs in *Catco*, in the instant case thirty-one witnesses testified in support of the market requirements of Transco's customers, utilizing 38 exhibits to support their testimony.

Transco's senior Production Engineer testified that without the additional gas reserves Transco would experience the following substantial peak day, annual and average day deficiencies in gas supply in meeting the requirements of its customers (all volumes in cubic feet at 14.73 psia) (R. 2694, 2695, 6909-6912):

	1959	1960	1961
Peak Day	116,800,000	159,400,000	171,200,000
Annual	8,162,000,000	24,899,000,000	23,081,000,000
Average Day	22,400,000	68,200,000	63,200,000

Each producer applicant presented a highly qualified witness to testify to the facts and circumstances surrounding the negotiation of the gas supply contracts. *Evidence as to comparative producer prices was placed in the record by several witnesses, including Transco's Vice President in charge of gas supply (R. 2628-2632, 2683, 2684) and a witness pre-*

sented by the Staff of the Commission. (R. 6913-6928) The United Gas Improvement Company also presented producer price evidence, incorporating by reference hundreds of producer contracts on file with the Commission. (R. 2911-2952)

The New York Commission and UGI proposed that a 17¢ initial price condition be attached to the independent producer certificates. Philadelphia Electric suggested an initial price condition of 9.79¢. *None of Transco's other 64 customers supported these price conditions.* (R. 10,350)

Transco opposed these conditions on several cogent grounds. The Commission lacks statutory power to requisition for Transco, or indeed any other market, uncommitted gas reserves in the field. Consequently, to support its 1958 and 1959 expansion programs Transco was obliged first to find a producer willing to enter into a contract to sell its uncommitted gas reserves and, as a condition of such contract, to file with the Commission the necessary application for a certificate of public convenience and necessity authorizing the sale. If the Commission substantially altered the terms and conditions of the producer contract, as would be the case if it attached 17¢ or 9.79¢ price conditions to the certificates of public convenience and necessity, Transco would not have the contractual right to demand that the independent producers accept such certificates, nor, on the other hand, could the Commission compel the producers to accept such certificates. Therefore, to attach 17¢ or 9.79¢ price conditions would result in the loss of this gas supply as the producers would turn to several other interstate pipeline companies which had been paying in excess

of 17¢ to producers in south Louisiana since 1953. (See R. 6913-6926, 10,428)

After careful consideration of the voluminous evidence of record and the arguments of counsel, the Presiding Examiner issued his initial decision in Docket Nos. G-13169, *et al.* on June 17, 1958 (R. 9751) and in Docket Nos. G-13143, *et al.* on July 9, 1958 (R. 9999). Oral argument before the Commission took place on August 1, 1958. The Commission recognized the need for an early disposition of the case (R. 10, 344):

> "For a number of reasons—among others, the importance of commencing Gulf Coast off-shore construction as soon as possible in view of the storm season, as well as the desire and need of Transco's customers for the additional service the company proposes during the coming winter if possible—it is important that we proceed expeditiously to final decision in this case. . . ."

As it was, after receiving Commission authorization on September 4, Transco only made the December 1, 1958 service date through the most strenuous efforts; putting on additional construction spreads and undertaking construction in the Gulf of Mexico offshore Louisiana in the teeth of the hurricanes.[24]

[24] Some of the construction barges used to install the pipeline to Block 76 Field, some 35 miles offshore Vermilion Parish, had to be abandoned by their crews on more than one occasion because of high winds and seas during the hurricane season. The devastation sometimes caused by Gulf hurricanes is a matter of public knowledge.

4. The Proceedings Before the Court of Appeals

Court review of the Commission's order of September 4, 1958 was jointly sought by UGI and Philadelphia Electric. Being beneficiaries of that order,[25] these petitioners singled out for attack only that part of the Commission's order of September 4, 1958 issuing certificates to the 26 independent producer applicants without the attachment of 17¢ (or 9.79¢) conditions. They ignored the fact that service to them depended on that gas supply, patently having no desire to cause Transco to terminate the additional sales to its customers, and gambling that the Court would take some action which would reverse the Commission and still leave the independent producers in a position where they would be obliged to continue sales to Transco.

The New York Commission was more logical. It argued that the Court of Appeals should not only nullify the certificates issued to the producers, because they did not have the 17¢ price condition attached, but also urged that the Court nullify two of the certificates[26] issued to Transco:

> "The propriety of the pipeline construction proposed by Transco in Docket Nos. G-13143 and G-13590 was entirely dependent upon its acquisi-

[25] Deliveries to Philadelphia Electric of an additional 10,000 Mcf per day began December 1, 1958. UGI received an additional 12,500 Mcf per day beginning December 10, 1958. Transco began injections in Leidy storage pool for the account of its customers in the summer of 1959. UGI has been allocated 5,000 Mcf per day of this storage service; Philadelphia Electric, 20,000 Mcf. See Appendix A, hereto.

[26] These certificates covered $130,000,000 of the authorized construction and all of the service authorized except that to Atlanta Gas Light Company.

tion of an additional adequate gas supply. Its acquisition of an additional adequate gas supply was, in turn, entirely dependent upon the issuance of certificates of public convience and necessity to the suppliers in Docket Nos. G-13169, *et al.* The certificates issued to the suppliers in the latter dockets are unlawful and therefore, petitioner herein requests that they be set aside. For that reason the issuance of certificates of public convenience and necessity to Transco in the related pipeline dockets was unlawful and should, similarly, be set aside."[27]

Delaware Power & Light Company, one of Transco's larger customers and wholly dependent upon Transco for its natural gas supply, unsuccessfully sought to intervene in the proceedings before the Court of Appeals in opposition to petitioners, arguing that their contentions were without merit, that petitioners' criticisms were aimed at the Commission and its failure to establish criteria for producer rates and that Transco stands to have its operations crippled as a by-product of petitioners' attack on the Commission.[28]

Petitioners advanced the same arguments before the Court of Appeals which they had employed without success before the Commission; revised and supplemented to reflect the decision of this Court in *Atlantic*

[27] Petition for Review filed by the New York Commission in the United States Court of Appeals for the Third Circuit, Public Service Commission of the State of New York v. Federal Power Commission, No. 12805, at page 11.

[28] It is significant that Consolidated Edison Company of New York, Inc., with over 1,000,000 gas customers, opposed the petitioners' efforts to attach similar price conditions to the producer certificates relating to Transco's 1959 Program in Docket No. G-16603. See Appendix C, hereto.

Refining Co. et al. v. *Public Service Commission of New York*, 360 U.S. 378 (1959).

The Court of Appeals, "with the text of the Supreme Court opinion before us", affirmed the Commission (Judge Hastie dissenting).[29] After briefly noting some of the aspects of this case, and without any effort to repeat all of the Commission's detailed findings, the Court concluded:[30]

> "The balancing of the weight to be given the various factors is not unlike that which a court of equity through the years has given in deciding whether an injunction is to issue in a case before it. It involves an exercise of judgment and the reasons which sway that exercise may be hard to articulate in a particular case.
>
> "The weighing of the factors and the conclusion to be reached is a task for the Commission. If the necessary elements have not been considered, the error is one of law and subject to court correction. If they have been considered and the conclusion reached is not unreasonable, the conclusion stands whether it is the one we should have reached or not. That, in our judgment, is the case here."

Petitioners applied to the Court of Appeals for rehearing, energetically restating their arguments in the light of this Court's decision in *Cateo*. On September 9, 1959 the Court of Appeals, "after due consideration" denied the petitions for rehearing.

[29] United Gas Improvement Company v. Federal Power Commission, 269 F. 2d 863 (3d Cir. 1959).

[30] 269 F. 2d at 869.

REASONS FOR DENYING THE WRIT

I

CATCO IS NOT SUBSTANTIALLY IDENTICAL WITH THIS CASE, AND THE COURT OF APPEALS DID NOT COMMIT REVERSIBLE ERROR WHEN, "WITH THE TEXT OF THE SUPREME COURT OPINION" BEFORE IT, THE COURT REVIEWED PETITIONERS' CONTENTIONS IN THE LIGHT OF THE RECORD IN THIS CASE AND AFFIRMED THE COMMISSION.

The same Court of Appeals which reversed the Commission in *Catco* was not persuaded, after careful consideration of this Court's decision, that *Catco* and this case are so identical in factual circumstances as to require reversal of the Commission in this case.[31] Concluding that all of the necessary elements had been considered by the Commission and that the conclusion reached is reasonable, the Court below refused to usurp the function of the Commission and affirmed the Commission's order.

Nothing signals so dramatically the difference between the two cases as the fact that the New York Commission has seen fit before this Court to materially alter the scope of its attack on the Commission's order, striving to "construct" a common ground between *Catco* and this case where such does not exist. Before the Court of Appeals the New York Commission requested that Court nullify Transco's certificates in Docket Nos. G-13183 and G-13590[32] as well as the certificates issued to the 26 producers. In its petition

[31] Circuit Judges Goodrich, Kalodner and Hastie, who made up the division which heard oral argument in the *Transco-Seaboard* case, were joined by Circuit Judge Staley in the order of September 9, 1959 denying the petitions for rehearing. Circuit Judges Kalodner, Staley and Hastie made up the division which heard oral argument in the *Catco* case.

[32] See page 14, *supra*.

for writ of certiorari the New York Commission dropped its attack on the Transco certificates, asking only "that the respondent's instant producer certifications be vacated. . . ."[33]

1. Unlike CATCO Which Involved Simply the Sale of Gas From a Single Area to a Pipeline Company and Construction By the Pipeline Company of the Necessary Gas Purchase Lateral, the Proposed Sales by 26 Different Producer Applicants in TRANSCO-SEABOARD, From Fields Scattered Over 15,000 Square Miles, Represent a Small But Necessary Part of a Complex Interdependent Project Costing the Pipeline Company $147,000,000 and Bringing Over 350 Million Cubic Feet of Gas Per Day in the Winter to Millions of Consumers Living in Villages, Towns and Cities From Alabama to New York.

In *Catco* the Commission was presented with the sale of gas from a single area located offshore Cameron Parish, Louisiana, with deliveries to be effected through a single gas purchase lateral.

In *Transco-Seaboard*, the Commission was concerned with the applications of 26 producers of natural gas[34] seeking authorization in 39 different dockets to sell to Transco gas reserves produced from 25 different fields scattered over an area exceeding 15,000 square miles in extent and to be gathered through more than 148 miles of gas purchase laterals costing an estimated $39,000,000. (See Appendixes B and D, hereto.) But this is not all. This gas supply was and is absolutely necessary to support certain proposals of Transco which were certificated by the Commission in the same order of September 4, 1958 (here under review) in

[33] Petition for Writ of Certiorari, page 27.

[34] The actual number of sellers is much larger than this number would indicate because several of the contracts have multiple sellers.

which the Commission authorized the producers to sell gas to Transco. As we noted in our statement of the case, the Commission authorized Transco to expand its transmission facilities at an estimated cost of $147,000,000. This involved construction of 970 miles of pipelines (including gas purchase laterals), installation of 14,500 horsepower of compression along the main transmission line and development of an old gas field in Pennsylvania (Leidy) into a storage pool. On the basis of the estimated two trillion cubic feet of additional gas supply obtained from the 26 producer applicants, Transco was authorized to use these new transmission facilities to undertake additional peak day sales to 30 customers of over 176 million cubic feet per day and a sale to one customer of ten billion cubic feet per year, and to provide 191 million cubic feet of storage service to ten customers. (See Appendix A, hereto.) These sales reflect the annual growth of the demands for natural gas of millions of consumers and thousands of industries in ten seaboard states.

Part of the gas supply here under attack has been flowing through the meters of consumers including those served by petitioners UGI and Philadelphia Electric and the utilities regulated by the New York Commission, since December 1958. Loss of this gas supply as a result of a reversal of the Commission's orders by this Court would not only jeopardize the additional service authorized by the September 4, 1958 order (constituting Transco's *1958* Program), but would disable Transco from continuing an additional 130 million cubic feet of daily sales to 44 customers initiated by Transco this year under its *1959* program.[35]

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[35] See Appendix C, hereto.

2. Unlike CATCO, the Record Here Contains Substantial Evidence of the Existence of an Urgent Need for Increased Supplies of Natural Gas Within Ninety Days of the Commission's Order.

In *Catco*, this Court failed to find any support whatsoever in the record for the conclusary finding on which the order was based that "the public served through the Tennessee Gas system is greatly in need of increased supplies of natural gas." 360 U.S. at 393. Mr. Justice Harlan, joined by Mr. Justice Frankfurter, enlarged this criticism by observing that the Commission's finding as to market was defective "particularly insofar as this finding implies that this need is immediate and cannot be satisfied from Tennessee's existing reserves": *Id.* at 394. Mr. Justice Clark, after noting that this want of evidence arose from the fact that any need for the Catco reserves "was wrapped up in the Commission's action in Docket No. G-11107, where Tennessee was asking for permission to enlarge its facilities," stated (*Id.* at 393):

> "However, the two dockets were not consolidated and the Presiding Examiner conditioned his approval here on the granting of the application in Docket G-11107, *no part of which record is here. . . .*" (Emphasis added.)

Similar criticisms cannot properly be levied against the record in *Transco-Seaboard*. Here the 4 pipeline expansion applications[39] were considered and decided by the Commission in the same opinion and order which determined the 39 applications of the pro-

[39] Docket Nos. G-13143, G-13590, G-13745 and G-13793.

ducers.[37] Here it was found on the basis of voluminous evidence of record that the customers of Transco required additional gas service for the winter of 1958-59 which could not be provided without additional gas supplies. The Commission stated (R. 10, 348):

> "The record shows the urgent need for the supplies of gas this program would make available to meet Transco's resale gas system requirements commencing with the coming winter . . . . Without this gas, Transco will experience a peak day deficiency next winter [1958-1959] of 117,000 Mcf in meeting such requirements which will increase to 171,000 Mcf by 1961. . . ."

In his oral argument before the Supreme Court in *Catco*, Counsel for the New York Commission stated:

> "It is conceivable that there might be such a screaming need for gas under some circumstances, not here present, that they could junk price and not pay attention to it and not be guided principally by it."

We submit that the record here meets even this colorful standard.

3. Unlike CATCO, the Record Here Shows That TRANSCO-SEABOARD Did Not Establish a New Price Plateau in Southern Louisiana.

This Court made several observations in *Catco* as to the effect of the producer prices involved in that proceeding (360 U.S. at 390):

> "[T]he initial price will set a pattern in an area where enormous reserves of gas appear to be

[37] Docket Nos. G-13169, *et al.* Certificates were issued in 38 dockets. The application in Docket No. G-13591 was withdrawn by the applicant prior to the Examiner's decision (R. 9758).

> present. . . . The price certificated will in effect become the floor for future contracts in the area. . . ."

By contrast, the Commission found in *Transco-Seaboard* (R. 10,347):[38]

> "[T]he producer prices proposed do not set a new price level, since other pipelines are buying gas in the general area in the same price range."

Although Counsel for the New York Commission on oral argument questioned the correctness of these findings, the Court of Appeals stated:[39]

> ". . . There can be little doubt that the Transco contract prices actually represent the market price for natural gas in the area."

This Court's action in remanding the *Catco* case does not affect the validity of the above-quoted finding of the Commission in *Transco-Seaboard*. The producer price plateau established in south Louisiana prior to the time the Commission issued its September 4, 1958 order is maintained to this day by producer sales which have been authorized under certificate orders of the Commission which are no longer subject to court review. (See R. 2629, 2631, 6913-6926, 10,428; *cf.* 2683, 2684.)

The producer sales authorized by the Commission in *Transco-Seaboard* are made at several prices, each price made up of two elements: a base price and a tax reimbursement amount. Considered solely from the

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[38] The Presiding Examiner had previously made a similar finding. (R. 9771)

[39] 269 F. 2d at 868, footnote 9.

point of view of base price, these sales are at 21c, 21.4c, 21.5c and 22c. (R. 2677, 6927) But the full price to be paid depends on the tax currently collected by the State of Louisiana from producers, the size of the royalty due the United States from offshore production, and the nature of the contractual obligation to reimburse the producer for such taxes and royalties.

At the time hearings were held in *Transco-Seaboard* before the Presiding Examiner in the spring of 1958 and at the time he issued his Initial Decision, Louisiana required producers to pay a gathering tax of 1c and a severance tax of 3 mills. Apparently by adding this tax (or a portion of it) to the base price, the Presiding Examiner concluded that the level of prices in these gas purchase contracts ranged from 22.4c to 23.3c. (R. 9766) However, beginning in August 1958, the Louisiana tax obligation was changed by statute to a gathering tax of 2c and a severance tax of 3 mills. This was the tax actually in effect at the time the Commission issued its order herein on September 4, 1958. When the constitutionality of this new tax was questioned, Louisiana amended its tax laws, effective December 1, 1958, to provide for a severance tax of 2.3c per Mcf and no gathering tax. This is the current Louisiana tax situation.

On April 18, 1958, almost five months before the *Transco-Seaboard* order, the Commission issued its order in Re *Southern Natural Gas Company*, Docket Nos. G-13082, *et al.*, authorizing, *inter alia*, eleven producer applicants to undertake sales to Southern Natural Gas Company, an interstate pipeline company, from several fields onshore and offshore southern Louisiana at a base price of 21.5c plus tax reimburse-

ment.[40] Commissioner Compole, dissenting, argued (19 FPC 561):

> "This is another instance in which sales to Southern Natural from reserves located partly on-shore and partly off-shore in Louisiana are certificated at prices at an all-time high level for sales of natural gas from the reserves in the southwest. . . ."

These sales to Southern Natural were among the producer contracts referred to by Transco's Vice President in charge of Gas Supply when he testified (R. 2631-2632): "[W]e were obliged to negotiate for the new gas reserves against the background established by these higher prices."

Southern Natural is contractually obliged in certain instances to reimburse the producers a larger portion of the Louisiana tax than is Transco. For example, in terms of today's Louisiana tax, Southern Natural reimburses producers selling from Bayou Pigeon Field, Iberia Parish, under the April 18, 1958 order, 2.175¢ out of the total severance tax of 2.3¢. In other words, Southern Natural is paying producers under sales authorized by final orders of the Commission which are no longer subject to court review, a total of 23.675¢ (21.5¢ base price plus 2.175¢ for tax reimbursement). This price exceeds the highest price (23.55¢) currently being paid by Transco to producers under sales authorized by the Commission's order of September 4, 1958 here under review.[41]

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[40] 19 FPC 558. The April 18, 1958 order refers to a total producer price of 22.8 cents. This is made up of a base price of 21.5 cents plus tax reimbursement. As the cited official report of the Commission contains only an incomplete copy of the order of April 18, 1958, the order is reproduced in full in Appendix E, hereto.

[41] The following tabulation shows the prices actually being paid by Transco on November 1, 1959 to producers under sales author-

4. Unlike CATCO, the Commission's Order Here Is Not Premised on Any Fear That the Producers' Gas Reserves Would Not Otherwise be Sold in Interstate Commerce.

This Court made a special point of the lack of evidence supporting the Commission's finding in *Catco* that the producers would seek to dispose of their gas elsewhere than to Tennessee Gas Transmission Company and the interstate market if they were not authorized to charge the initial price provided for in their contracts. 360 U.S. at 394.

The Commission had no occasion to make any such finding in *Transco-Seaboard*. Unlike the situation in *Catco*, the Commission here found (R. 10, 365):

> "As to claimed producer threats, there are no such threats in this case. Various producers have reserved the right to terminate their contracts of sale with Transco if the seller does not obtain a satisfactory certificate. We do not consider such

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ized by the September 4, 1958 order and in accordance with rate schedules filed by the producers with the Commission:*

Location of Reserves	Base Price	Tax or Royalty in Lieu of Tax**	Total Price Paid
Vermilion Parish	21.0¢	2.05¢	23.05¢
Offshore Vermilion Parish	21.4¢	0¢***	21.4¢
Jefferson Davis, St. James, St. Charles, Lafourche and Terrebonne Parishes	21.5¢	2.05¢	23.55¢
Offshore Cameron Parish	22.0¢	.2625¢***	22.2625¢

* Transco had not purchased gas from seven of the new fields as of November 1, 1959. However, the Company is purchasing gas under contracts representative of each of the above base price categories and it has not contracted to pay any higher prices than those shown in this tabulation for gas from the remaining fields.

** Reflects the Louisiana severance tax of 2.3¢ per Mcf effective December 1, 1958.

*** This is the tax or royalty in lieu of tax actually being paid. Should this Court ultimately extend the boundary of Louisiana so far out to sea that these reserves fall within the State's tax jurisdiction, then the tax obligation of Transco may be larger. See United States v. State of Louisiana, October Term, 1959, Orig. 10, now pending before this Court.

> reservations to be any limitation upon our right of inquiry into proposed rates set forth in the several producer contracts . . . . Where the possibility of non-acceptance of a certificate exists, we think the proper course is the same followed in every certificate case—to consider the competing factors, evaluate the alternatives, and decide as the public convenience and necessity requires."

In *Transco-Seaboard*, the Commission was not handed the *Cateo* alternative: sale to the pipeline company or no sale in interstate commerce. Instead, the Commission had to determine whether with the recommended price conditions the sale would be made to Transco by the producers or not.[42] (R. 10,348)

Transco is only one of several interstate pipeline companies purchasing gas in Louisiana. Transco attempted to contract for additional supplies of natural gas at 17¢ (the higher of the two price conditions recommended by petitioners) and failed. (R. 2629-2630) The reasons are obvious from the record. Other interstate pipeline companies have been actually purchasing gas from producers in southern Louisiana since 1953 at prices higher than 17¢. *Several interstate pipeline companies.* (other than Tennessee Gas Transmission Company) *had been purchasing gas in south Louisiana prior to the execution of the* Cateo *contracts in August 1956 at prices of at least 20¢ plus tax.* (R. 6914, 6916, 6919, 6921, 6922, 6926) Faced with these facts, it can hardly be said that the Commission abused its discre-

[42] In *Cateo*, this Court stated (360 U.S. at 387): "Certainly the filing of the application for a certificate did not constitute a dedication to the interstate market of the gas recoverable under these leases. Nor is there doubt that the producers were at liberty to refuse conditional certificates proposed by the Commission's second order . . . ."

tion when it refused to gamble on losing Transco's gas reserves to some other interstate pipeline company, which had for several years been paying higher prices for gas under certificates no longer subject to court review, on the eve of the 1958-1959 winter heating season by attaching the requested price conditions to the producer certificates.

5. Unlike CATCO Where the Cost Impact Was Obscure, Transco's Customers Were Advised, in Advance That an Increase in Cost of Gas to Them Was the Necessary Concomitance of Additional Gas Service.

This Court found insufficient evidence in *Catco* to support a finding of public convenience and necessity where no effort had been made to show why the pipeline purchaser, Tennessee Gas Transmission Company, had to pay more for the *Catco* reserves than its weighted average cost of gas. The Court did not find convincing the evidence as to whether the certification of the price would trigger the favored-nations clauses in other contracts of Tennessee Gas. It also noted that the purchase of gas by Tennessee Gas from the *Catco* producers led to an increase in rates by Tennessee Gas to its customers. (360 U.S. at 393)

Turning to *Transco-Seaboard*, the record evidence shows that Transco advised its customers that it could not acquire the gas reserves needed to supply their increased requirements unless it raised the price which it was offering the producers for new gas reserves. (R. 2633) The larger customers, in turn, agreed to pay Transco more for all of the gas they purchased from Transco, if necessary, in order to obtain the additional gas service involved in this case. (R. 6785-6870) There has been no attempt in *Transco-Seaboard* to

conceal the fact that the acquisition of the new gas reserves would result in a rate increase to Transco's customers. Transco admitted that some of its old contracts with producers in southern Louisiana would be triggered, although there is no certainty as to the amount of increase that will result from such triggering as the producers seeking rate increases by virtue of triggering must meet the rate standards of Section 4 of the Natural Gas Act before such increase can become permanent.[43] (R. 2655-2656) In this connection, it should be remembered that favored-nations clauses are in Transco's old contracts; contracts which are on file with the Commission as rate schedules and which Transco cannot change. However, Transco was able in its new contracts, which are the subject of this proceeding, to eliminate all favored-nations and price redetermination clauses. (R. 2632)

II

THE COMMISSION'S RECENT CERTIFICATE ORDERS DEMONSTRATE THAT IT IS UNNECESSARY FOR THIS COURT TO REPEAT ITS STATEMENT IN CATCO AS TO THE COMMISSION'S DUTIES.

The *Catco* case is clearly distinguishable from this case, as we have just shown. But even if this were not so, Petitioners have cited no good reason why the Supreme Court should again consider the Commis-

[43] Had Transco acquired the reserves required for the *1958* expansion program in Railroad Districts 2 and 4 in Texas, instead of in south Louisiana, the triggering of favored-nations clauses in existing Texas contracts would have resulted in an increase in cost of gas of approximately $15,000,000 per annum. (R. 606) By contrast, the estimated maximum impact of triggering existing Louisiana contracts is approximately $5,000,000 per annum, assuming the producers can ultimately justify the increases in Section 4 rate proceedings. (R. 2656)

sion's duties and functions under Section 7 of the Natural Gas Act so soon after the *Cateo* decision.

Cateo was decided by the Supreme Court on June 22, 1959. The Federal Power Commission has shown by its actions since that time that it is constantly aware of that decision and understands its implications. Evaluating all factors bearing on the public interest, the Commission thereafter declined to attach price conditions to certificates of public convenience and necessity issued to certain independent producers where the Commission was not convinced that a new producer price plateau would be established in an area, or where the Commission has concluded from the evidence that the circumstances justified allowing the higher initial price.[44]

Where the Commission has concluded from an evaluation of the record that the establishment of a new producer price plateau is not required by the public convenience and necessity, it has not hesitated to attach price conditions to the certificates issued to the independent producer applicants which would require that the sales be initiated at lower price levels. By order issued August 10, 1959, the Commission attached lower price conditions to the bulk of the gas supply upon which an entirely new pipeline from

[44] Re Trunkline Gas Co., Docket Nos. G-15394, *et al.*, rehearing denied July 22, 1959; Re South Georgia Natural Gas Company, *et al.*, Docket Nos. G-9892, *et al.*, FPC Opinion No. 325 issued August 7, 1959; Re Texas Gas Transmission Corporation, *et al.*, Docket Nos. G-17335, *et al.*, FPC Opinion No. 327 issued August 10, 1959; Re The California Company, Docket Nos. G-16108, *et al.*, August 10, 1959; Re Sun Oil Company, Docket Nos. G-15122, *et al.*, August 10, 1959; Sunray Mid-Continent Oil Company, Docket No. G-14753, August 10, 1959; Re Superior Oil Company, Docket Nos. G-16380, *et al.*, August 10, 1959.

Texas to California was based.[45] Again, on October 13, 1959, the Commission refused to allow Phillips Petroleum Company to initiate a new sale to United Gas Pipe Line Company unless it reduced its initial price because the proposed higher price established a new price plateau and had not been shown to be required by the public convenience and necessity.[46]

This is the only pre-*Catco* Commission certificate case now in the courts. Clearly applying the standards of the *Catco* decision of this Court, the Court below affirmed the Commission of the basis of the record in this case. It is obvious from its actions since the *Catco* decision, that the Commission *too has been* following that decision.

CONCLUSION

For the foregoing reasons it is respectfully submitted that these petitions for writ of certiorari should be denied.

Respectfully submitted,

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[45] FPC Opinion No. 328, issued August 10, 1959, Re Transwestern Pipeline Company, Docket Nos. G-14871, *et al.*

[46] FPC Opinion No. 330, issued October 13, 1959, Re Phillips Petroleum Company, Docket Nos. G-15514, *et al.*

APPENDIX A

ADDITIONAL SERVICE AUTHORIZED BY FEDERAL POWER COMMISSION ORDER ISSUED SEPTEMBER 4, 1958 (20 FPC 264)[1]

(Transco's *1958* Expansion Program)

Map Code[2]	Customer	Additional Allocation Mcf day at 14.7 psia	Rate Schedule
1	Brooklyn Borough Gas Company	1,000	CD-3
2	Brooklyn Union Gas Company, The	30,000	CD-3
3	Elizabethtown Consolidated Gas Company	3,000	CD-3
4	Long Island Lighting Company	25,000	CD-3
5	Philadelphia Electric Company	10,000	CD-3
6	Public Service Electric and Gas Company	50,000	CD-3
7	South Jersey Gas Company	3,000	CD-3
8	United Gas Improvement Company, The	12,500	CD-3
9	Danville, Virginia, City of	3,000	CD-2
10	Laurens, South Carolina, City of	3,460	CD-2
11	Public Service Company of North Carolina, Inc.	3,000	CD-2
12	Atlanta Gas Light Company	22,010	CD-1
13	Linden, Alabama, City of	1,525	CD-1
14	Manufacturers Light and Heat Company, The	1,190	G-3
15	Pittston Gas Company	1,426	G-3
16	Central Virginia Gas Company	1,985	G-2
17	Clinton Newberry Natural Gas Authority	490	G-2
18	North Carolina Gas Corporation	500	G-2
19	Union, South Carolina, City of	162	G-2
20	Butler, Alabama, City of	50	G-1
21	Commerce, Georgia, City of	103	G-1
22	Covington, Georgia, City of	236	G-1
23	Elberton, Georgia, City of	460	G-1
24	Jefferson, Georgia, City of	137	G-1
25	Lawrenceville, Georgia, City of	313	G-1
26	Monroe, Georgia, City of	500	G-1
27	Sugar Hill, Georgia, City of	53	G-1
28	United Cities Gas Company	265	G-1
29	Winder, Georgia, City of	150	G-1
30	Owens-Corning Fiberglas Corporation	1,000	Direct Sale
	Total Additional Peak Day Sales Allocations	176,515	

[1] All of this authorized additional service has commenced except for deliveries to New York State Natural Gas Corporation under Rate Schedule ACQ-3 which will begin January 1, 1960, as originally proposed.

[2] This is the code used to identify on Appendix B (in green) the locations of customers authorized to receive the additional service.

Appendix A (Continued)

STORAGE SERVICE

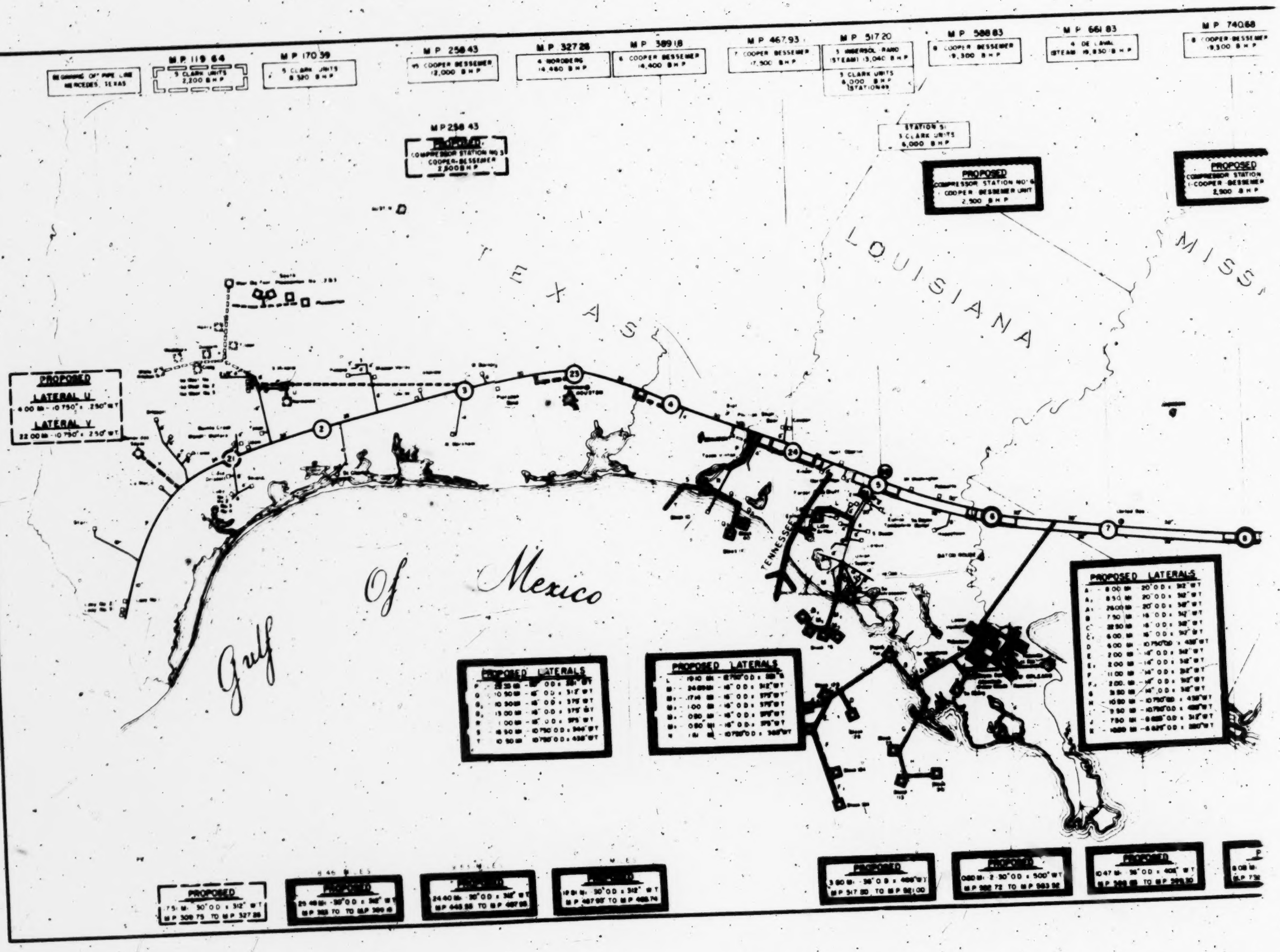
Map Code[2]	Customer	Additional Allocation Mcf/day at 14.7 psia	Rate Schedule
1	Brooklyn Borough Gas Company	1,000	LS
2	Brooklyn Union Gas Company, The	40,000	LS
31	Consolidated Edison Company of New York, Inc.	30,000	LS
32	Delaware Power and Light Company	2,000	LS
3	Elizabethtown Consolidated Gas Company	6,000	LS
4	Long Island Lighting Company	25,000	LS
5	Philadelphia Electric Company	20,000	LS
6	Public Service Electric and Gas Company	60,000	LS
7	South Jersey Gas Company	2,000	LS
8	United Gas Improvement Company, The	5,000	LS
	Total Leidy Storage Service Allocations	191,000	

ANNUAL FIRM SALE

33	New York State Natural Gas Corporation	10,000,000[3]	ACQ-3

[2] This is the code used to identify on Appendix B (in green) the locations of customers authorized to receive the additional service.

[3] Annual quantity.


M P 119 64
3 CLARK UNITS
2,200 B H P
M P 170 39
3 CLARK UNITS
6,320 B H P
M P 258 43
4 COOPER BESSEMER
12,000 B H P
M P 327 28
4 WORTHINGTON
14,480 B H P
M P 389 18
6 COOPER BESSEMER
16,400 B H P
M P 467 93
7 COOPER BESSEMER
17,500 B H P
M P 517 20
3 INGERSOL RAND
(STEAM) 13,040 B H P
3 CLARK UNITS
6,000 B H P
(STATION 4)
M P 588 83
5 COOPER BESSEMER
9,300 B H P
M P 661 83
4 DE LAVAL
(STEAM) 19,850 B H P
M P 740 68
5 COOPER BESSEMER
9,300 B H P
M P 258 43
PROPOSED
COMPRESSOR STATION NO 3
COOPER-BESSEMER
2,500 B H P
STATION 5:
3 CLARK UNITS
6,000 B H P
PROPOSED
COMPRESSOR STATION NO 6
1 COOPER BESSEMER UNIT
2,500 B H P
PROPOSED
COMPRESSOR STATION
1 COOPER BESSEMER
2,500 B H P
PROPOSED
LATERAL U
LATERAL V
TEXAS
LOUISIANA
MISS
Gulf Of Mexico
PROPOSED LATERALS
PROPOSED LATERALS
PROPOSED LATERALS
PROPOSED
PROPOSED
PROPOSED
PROPOSED
PROPOSED

M P 740.68
8 COOPER BESSEMER
9,300 B H P

M P 811.37
7 COOPER BESSEMER
16,800 B H P

M P 890.74
4 CLARK UNITS
(STEAM) 20,300 B H P

M P 969.63
7 COOPER BESSEMER
16,800 B H P

M P 1048.48
7 COOPER BESSEMER
16,800 B H P

M P 1124.88
9 CLARK UNITS
14,720 B H P

M P 1206.07
6 COOPER BESSEMER
14,400 B H P

M P 1287.35
8 CLARK UNITS
12,960 B H P

M P 1369.68
7 CLARK UNITS
11,200 B H P

M P 1457.23
COOPER BESSEMER
2,000 B H P

M P 811.37
PROPOSED
COMPRESSOR STATION NO 9
1-COOPER-BESSEMER
2,500 B H P

PROPOSED
COMPRESSOR STATION NO 8
1-COOPER-BESSEMER UNIT
2,500 B H P

PROPOSED
COMPRESSOR STATION NO 9
1-COOPER-BESSEMER UNIT
2,500 B H P

M P 969.63
PROPOSED
COMPRESSOR STATION NO 11
1-COOPER-BESSEMER
2,500 B H P

PROPOSED
COMPRESSOR STATION NO 11
1-COOPER-BESSEMER UNIT
2,500 B H P

M P 1048.48
PROPOSED
COMPRESSOR STATION NO 12
1-COOPER BESSEMER
2,500 B H P

M P 1124.88
PROPOSED
COMPRESSOR STATION NO 13
1-CLARK
2,000 B H P

M P 1206.07
PROPOSED
COMPRESSOR STATION NO 14
1-COOPER BESSEMER
2,300 B H P

M P 1247.28
1 CLARK
12,500 B H P

M P 1326.41
PROPOSED
COMPRESSOR STATION NO 15
2 WORTHINGTON
7,640 B H P

M P 1413.21
5 CLARK UNITS
10,000 B H P

M P 1499.5x
PROPOSED
COMPRESSOR STATION
2 COOPER BESSEMER
8,800 B H P

TENNESSEE

MISSISSIPPI

ALABAMA

GEORGIA

FLA.

SOUTH CAROLINA

NORTH CAROLINA

VIRGINIA

8 9 10 11 12 13 14 15 16 17 18 19 20 21 22

PROPOSED LATERALS

PROPOSED

PROPOSED

PROPOSED

PROPOSED

PROPOSED

PROPOSED

PROPOSED

PROPOSED

PROPOSED

M P 1457 23
5 COOPER BESSEMER
12,000 B H P

M P 1540 59
7 CLARK UNITS
11,200 B H P

M P 1628 95
7 - CLARK UNITS
11,200 B H P

M P 1722.36
8 - CLARK UNITS
15,600 B H P

M P 1831 57
END OF PIPE LINE
MANHATTAN

M P 1413 21
5 CLARK UNITS
10,000 B H P

M P 1499 51
PROPOSED
COMPRESSOR STATION NO 37
2 COOPER BESSEMER UNITS
8,800 B H P

M P 1583 56
5 INGERSOLL - RAND UNITS
10,000 B H P

M P 1674 75
PROPOSED
COMPRESSOR STATION NO 38
2-WORTHING UNITS
7640 B H P

PENNSYLVANIA

PROPOSED
14.49 MI - 23.375" O.D. x .375" W.T.
DELAWARE RIVER TO LEIDY

N E W

PROPOSED
.980 MI - 30" O.D. x .500" W.T.
CENTERVILLE, NJ TO DELAWARE R.

PROPOSED
.6 90 MI - 36" O.D. x .500" W.T.
M.P. 1778.78 TO CENTERVILLE, NJ

PROPOSED
29.72 MI - 36" O.D. x .469" W.T.
M.P. 1748.04 TO M.P. 1778.76

PROPOSED
6.90 MI - 36" O.D. x .500" W.T.
M.P. 1820.60 TO M.P. 1827.5

JERSEY

SCALE

—LEGEND—

- REGULATOR STATION
- TRANSCONTINENTAL EXISTING FACILITIES
- TRANSCONTINENTAL PURCHASE METER STATION
- TRANSCONTINENTAL SALES METER STATION
- TRANSCONTINENTAL EXCHANGE METER STATION
- CUSTOMER OWNED EXCHANGE METER STATION
- FACILITIES PROPOSED DOCKET 6-13980 1958 CONSTRUCTION
- FACILITIES CERTIFICATED OR UNDER CONSTRUCTION
- PROPOSED FACILITIES OTHER DOCKETS
- FACILITIES PENDING APPROVAL DOCKET 6-13980
- PROPOSED FACILITIES DOCKET 6-13143
- FACILITIES PROPOSED DOCKET 6-13980 1959 CONSTRUCTION
- FACILITIES PROPOSED DOCKET 6-13746

Atlantic Ocean

MD. DEL.

G I N I A

N O R T H

I N A

PROPOSED
16.66 MI - 36" O.D. x .406" W.T.
M.P. 1378.66 TO M.P. 1395.32

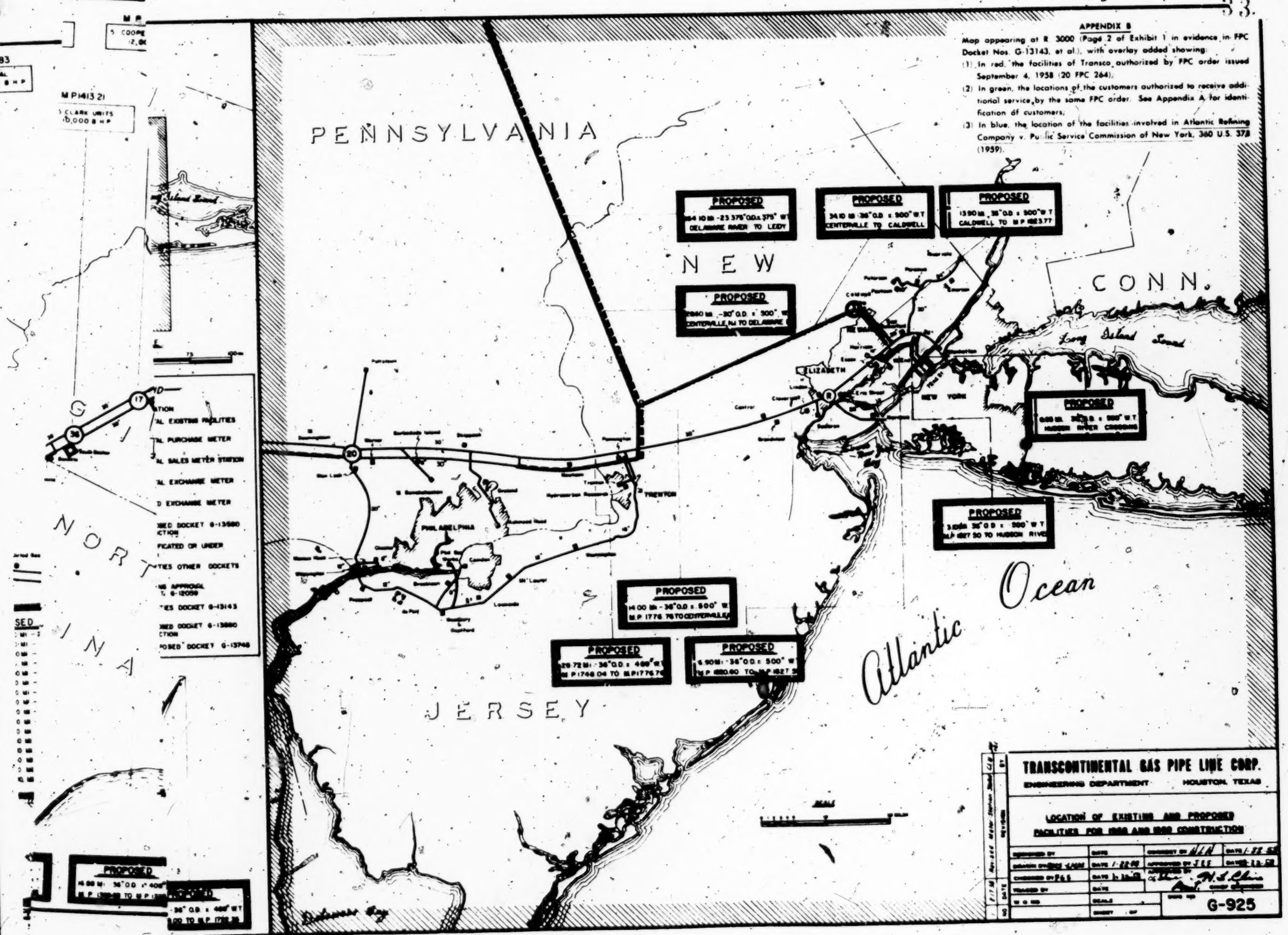
PROPOSED
11.63 MI - 30" O.D. x .312" W.T.
M.P. 1395.32 TO M.P. 1406.95

PROPOSED
15.93 MI - 36" O.D. x .406" W.T.
M.P. 1406.95 TO M.P. 1422.88

PROPOSED
17.38 MI - 36" O.D. x .406" W.T.
M.P. 1422.88 TO M.P. 1440.26

PROPOSED
8.23 MI - 30" O.D. x .312" W.T.
M.P. 1720.77 TO M.P. 1729.00

PROPOSED
13.36 MI - 36" O.D. x .406" W.T.
M.P. 1729.00 TO M.P. 1742.36


APPENDIX B
Map appearing at R. 3000 (Page 2 of Exhibit 1 in evidence in FPC Docket Nos. G-13143, et al.), with overlay added showing:
(1) In red, the facilities of Transco authorized by FPC order issued September 4, 1958 (20 FPC 264);
(2) In green, the locations of the customers authorized to receive additional service by the same FPC order. See Appendix A for identification of customers;
(3) In blue, the location of the facilities involved in Atlantic Refining Company v. Public Service Commission of New York, 360 U.S. 378 (1959).
PENNSYLVANIA
NEW JERSEY
CONN.
Long Island Sound
Atlantic Ocean
PROPOSED
PROPOSED
PROPOSED
PROPOSED
PROPOSED
PROPOSED
PROPOSED
PROPOSED
PROPOSED
PHILADELPHIA
TRENTON
ELIZABETH
NEW YORK
TRANSCONTINENTAL GAS PIPE LINE CORP.
ENGINEERING DEPARTMENT HOUSTON, TEXAS
LOCATION OF EXISTING AND PROPOSED FACILITIES FOR 1958 AND 1959 CONSTRUCTION
G-925

APPENDIX C

ADDITIONAL SERVICE PROPOSED BY TRANSCO IN FPC DOCKET NO. G-16603 AND AUTHORIZED BY FPC ORDER ISSUED NOVEMBER 17, 1959[1]

(Transco's *1959* Expansion Program)

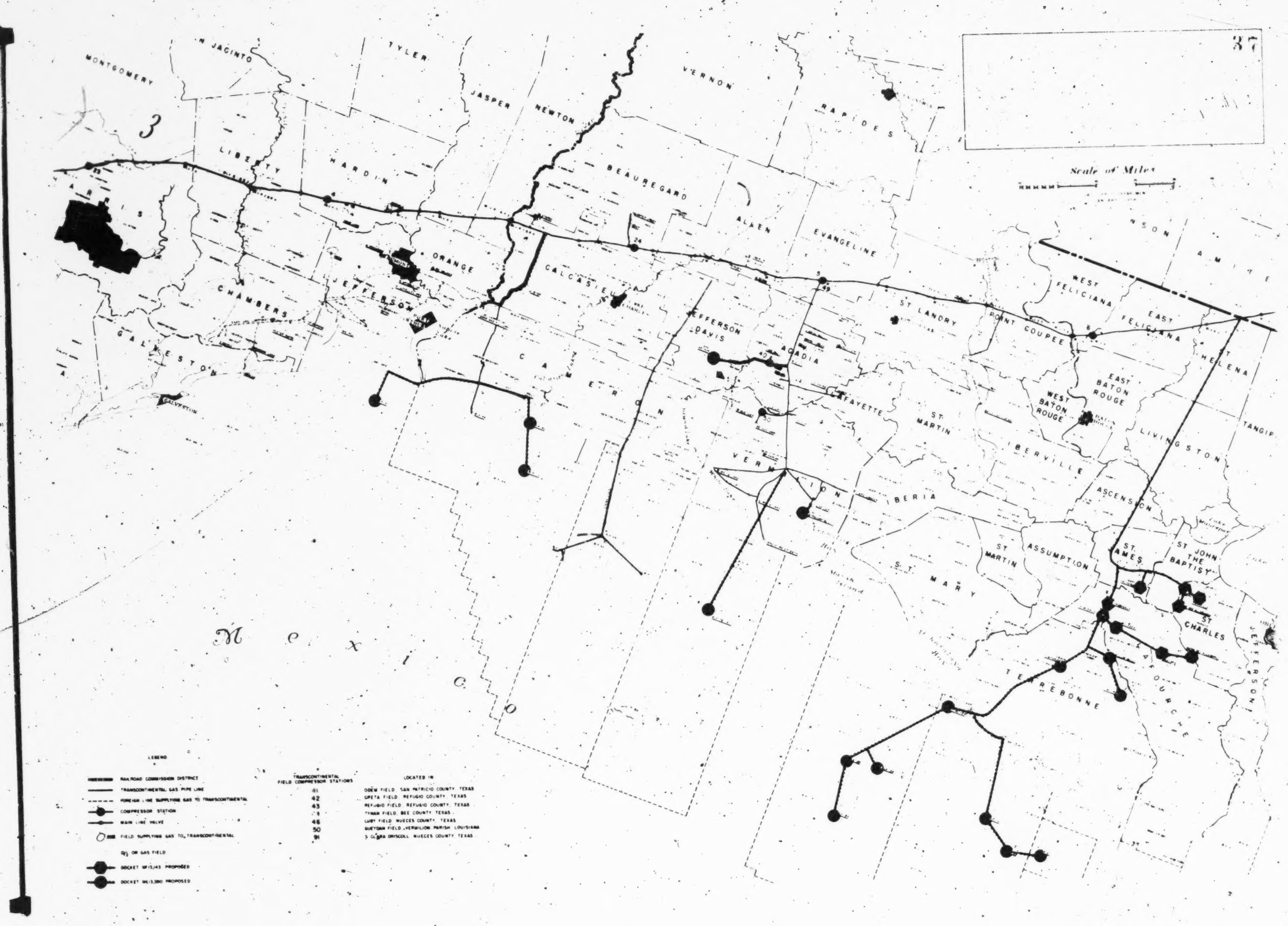
Customer	Proposed Additional Allocation Mcf/day *at* 14.7 psia	Rate Schedule
Consolidated Edison Company, of New York, Inc.	25,000	CD-3
Brooklyn Union Gas Company, The	500	CD-3
Delaware Power and Light Company	3,000	CD-3
Eastern Shore Natural Gas Company	480	CD-3
Elizabethtown Consolidated Gas Company	1,500	CD-3
Long Island Lighting Company	10,000	CD-3
South Jersey Gas Company	5,000	CD-3
United Gas Improvement Company, The	5,000	CD-3
Atlantic Seaboard Corporation	25,000	CD-2
Carolina Natural Gas Corporation	300	CD-2
Danville, Virginia, City of	2,000	CD-2
Laurens, South Carolina, City of	500	CD-2
Piedmont Natural Gas Company, Inc.	13,461	CD-2
Public Service Company of North Carolina, Inc.	9,000	CD-2
Atlanta Gas Light Company	2,000	CD-1
Frederick Gas Company, Inc.	500	G-3
Blacksburg, South Carolina, Town of	50	G-2
Fountain Inn, South Carolina, Town of	221	G-2
Lexington, North Carolina, City of	378	G-2
North Carolina Gas Service	1,000	G-2
South Carolina Gas Company (Division of United Cities Gas Company)	175	G-2
Southwestern Virginia Gas Company	800	G-2
Alexander City, Alabama, City of	810	G-1
Bowman, Georgia, City of	54	G-1
Buford, Georgia, City of	860	G-1
Butler, Alabama, Town of	200	G-1
Clanton, Alabama, City of	808	G-1
Commerce, Georgia, City of	800	G-1
Covington, Georgia, City of	1,500	G-1
East Central Alabama Gas District	512	G-1
Elberton, Georgia, City of	600	G-1
Georgia Gas Company (Division of United Cities Gas Company)	235	G-1
Hartwell, Georgia, City of	800	G-1
Jefferson, Georgia, City of	600	G-1
Lawrenceville, Georgia, City of	900	G-1
Maplesville, Alabama, Town of	82	G-1
Mid-Georgia Gas Company	932	G-1
Monroe, Georgia, City of	900	G-1

[1] Transco commenced 9,910 Mcf of this service last winter under temporary certificate issued January 9, 1959. On October 16, 1959 Transco received a temporary certificate authorizing the company to begin the remainder of the service. On November 1, 1959, Transco was providing the additional service to all but four customers, three of whom want the service to begin in December, 1959. Service to the last customer will begin as soon as a new chemical plant now under construction is completed this winter.

Appendix C—Continued

Customer	Proposed Additional Allocation Mcf/day @ 14.7 psia	Rate Schedule
Roanoke, Alabama, City of	600	G-1
Royston, Georgia, City of	451	G-1
Sugar Hill, Georgia, Town of	150	G-1
Toccoa, Georgia, City of	790	G-1
Wedowee, Alabama, Town of	249	G-1
Winder, Georgia, City of	900	G-1
Total additional peak day sales allocations	129,589	
Sun Oil Company	9,000	X-111
Total additional sales and transportation allocations	138,589	

[1] A transportation service which does not depend upon the gas supplies dedicated by contract to Transco.



LEGEND

- RAILROAD COMMISSION DISTRICT
- TRANSCONTINENTAL GAS PIPE LINE
- FOREIGN LINE SUPPLYING GAS TO TRANSCONTINENTAL
- COMPRESSOR STATION
- MAIN LINE VALVE
- FIELD SUPPLYING GAS TO TRANSCONTINENTAL
- OIL OR GAS FIELD
- DOCKET 1813,143 PROPOSED
- DOCKET 1813,200 PROPOSED

TRANSCONTINENTAL FIELD COMPRESSOR STATIONS	LOCATED IN
41	ODEM FIELD, SAN PATRICIO COUNTY, TEXAS
42	GRETA FIELD, REFUGIO COUNTY, TEXAS
43	REFUGIO FIELD, REFUGIO COUNTY, TEXAS
1	TYNAN FIELD, BEE COUNTY, TEXAS
46	LUBY FIELD, NUECES COUNTY, TEXAS
50	GUEYDAN FIELD, VERMILION PARISH, LOUISIANA
91	S. GLORIA DRISCOLL, NUECES COUNTY, TEXAS

APPENDIX E

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Seaborn L. Digby, Frederick Stueck, William R. Connole and Arthur Kline.

In the Matters of*

Southern Natural Gas Company	Docket Nos. G-13082 & G-13379
Aluminum Company of America	Docket No. G-13290
Howell & Howell[1]	Docket No. G-13115
Sohio Petroleum Company[2]	Docket No. G-13135
Tidewater Oil Company	Docket No. G-13051
Shell Oil Company[3]	Docket No. G-13256
Continental Oil Company[3]	Docket No. G-13301
John W. Mecom[4]	Docket No. G-13110
The California Company	Docket No. G-13222
Lyons & Logan[5]	Docket No. G-13487
C. G. Glascock-Tidelands Oil Company, *et al.*[6]	Docket No. G-13781
Berkshire Oil Company and R. R. Frankel	Docket No. G-13224

Findings and Order Issuing Certificates of Public Convenience and Necessity

(Issued April 18, 1958)

Southern Natural Gas Company (Southern Natural), a Delaware corporation, with its principal place of business in Birmingham, Alabama, filed two applications on August 19 and October 7, 1957, in Dockets Nos. G-13082 and G-13379 respectively, pursuant to Section 7 of the Natural Gas Act, for authority to construct and operate certain facilities described therein.

* See appendix concerning footnotes.

The purpose of the proposed facilities above referred to is to enable Southern Natural to procure additional supplies of natural gas from the various other applicants named in the caption hereof by constructing extensions, laterals and loops on its South Louisiana supply system to increase the capacity of the supply system as it now exists. No increase in the sales capacity of Southern's system is proposed.

The facilities proposed in Docket No. G-13082 are as follows:

136.8 miles of 24 and 26-inch pipelines (Toca-Gwinville), the estimated cost of which is $15,666,690.

198.2 miles of 4½-inch to 20-inch supply lines, the estimated cost of which is $20,057,010.

3,650 horsepower compressor additions to its White Castle and Toca stations, the estimated cost of which is $1,160,800.

18 measuring stations, the estimated cost of which is $278,000.

The facilities proposed in Docket No. G-13379 are as follows:

7.19 miles of 20-inch line loops on the Gwinville-Pickens line, the cost of which is estimated at $598,310.

660 horsepower compressor addition at Franklinton station, the estimated cost of which is $211,100.

17.3 miles of 6⅝ and 16-inch supply lines, the estimated cost of which is $1,751,890.

5 measuring stations, the estimated cost of which is $44,000.

The proposed facilities together with those certificated in Docket No. G-13203 on March 17, 1958, will increase the capacity of Southern Natural's South Louisiana Supply

system by 298,030 Mcf per day and this increased volume will be used by existing customers within the existing market and to supplement the diminishing supplies from the Carthage and Monroe Fields. All of the facilities proposed will be operated as integral parts of the present system and the gas which is to flow through them will be commingled with gas from other sources of supply transported in interstate commerce and resold for ultimate public consumption as hereinbefore stated.

Southern Natural has not shown the plan of financing the costs of the proposed projects; but it has demonstrated its ability to induce capital investments in past construction projects. The volumes of the gas reserves to be acquired, including certain small quantities not presently dedicated by contracts but represented as being within the reach of probability, are estimated at approximately 1,042,553 MMcf.

On September 18, 1957, Aluminum Company of America, a Pennsylvania corporation, with its principal place of business at Pittsburgh, Pennsylvania, filed an application in Docket No. G-13290 for a certificate of public convenience and necessity authorizing the sale of natural gas in interstate commerce to Southern Natural for resale from volumes produced from certain lands and leaseholds located in the South Section 28 Field, St. Martin Parish, Louisiana, owned and operated by applicant and described fully in its application.

On August 22, 1957, Howell, Holloway & Howell, a partnership, composed of G. B. Howell, W. C. Holloway and Vernon C. Howell, of Dallas, Texas, filed an application (supplemented January 31, 1958) in Docket No. G-13113 for a certificate of public convenience and necessity authorizing the sale of natural gas in interstate commerce to Southern Natural for resale from volumes produced from properties in the North Bayou Boullion and East-Happytown Fields, St. Martin and Iberville Parishes,

Louisiana, respectively, all as more fully described in the application. On December 21, 1957, W. C. Holloway, one of the partners, sold and assigned his interests in the partnership to the two remaining members and on January 31, 1958, a supplement or amendment to the application just mentioned was filed requesting a change of name of the applicant to Howell & Howell.

On August 26, 1957, Sohio Petroleum Company, an Ohio corporation with its principal place of business in Cleveland, Ohio, filed an application in Docket No. G-13135 for a certificate of public convenience and necessity authorizing the sale of natural gas in interstate commerce to Southern Natural for resale from volumes produced from certain lands and interests in Bayou Boullion Field, Iberville and St. Martin Parishes, Louisiana, as fully described in the application.

On August 12, 1957, Tidewater Oil Company, a Delaware corporation with its principal place of business at San Francisco, California, filed an application in Docket No. G-13051 for a certificate of public convenience and necessity authorizing the sale of natural gas in interstate commerce to Southern Natural for resale from volumes produced from certain lands and interests in Bayou Boullion Field, St. Martin and Iberville Parishes, Louisiana, as fully described in the application.

On September 11, 1957, Shell Oil Company, a Delaware corporation, with its principal place of business in New York, New York, filed an application in Docket No. G-13256 for a certificate of public convenience and necessity authorizing the sale of natural gas in interstate commerce to Southern Natural for resale from volumes produced from a lease in the Loisel Field, Iberia and St. Mary Parishes, Louisiana, as more fully described in the application.

On September 20, 1957, Continental Oil Company, a Delaware corporation, with its principal place of business in

Houston, Texas filed an application in Docket No. G-13301 for a certificate of public convenience and necessity authorizing the sale of natural gas in interstate commerce to Southern Natural for resale from volumes produced from Loisel Field, St. Mary and Iberia Parishes, Louisiana, as more fully described in the application.

On August 21, 1957, John W. Mecom, Operator, for himself and Freeport Oil Company, of Houston, Texas, filed an application in Docket No. G-13110 for a certificate of public convenience and necessity authorizing the sale of natural gas in interstate commerce to Southern Natural for resale from volumes produced from land and leases in the Lake Washington Field Area, Plaquemines Parish, Louisiana, as more fully described in the application.

On September 5, 1957, the California Company, a California corporation with its principal place of business at New Orleans, Louisiana filed an application in Docket No. G-13222 for a certificate of public convenience and necessity authorizing the sale of natural gas in interstate commerce to Southern Natural for resale from volumes produced from applicant's leases located in various fields and parishes in the state of Louisiana, as more fully described in the application.

On October 16, 1957, Lyons & Logan, a co-partnership, formed by C. H. Lyons, Sr., C. H. Lyons, Jr., Hall M. Lyons, G. L. Logan, E. L. Hilliard, G. F. Abendroth and J. T. Pahner, as Operator, and on behalf of others named, all of Shreveport, Louisiana, filed an application in Docket No. G-13487 for a certificate of public convenience and necessity authorizing it to sell natural gas in interstate commerce to Southern Natural for resale from volumes produced from certain lands in the Bayou Long and Mystic Bayou Fields, Iberia and St. Martin Parishes, Louisiana, as more fully described in the application.

On November 21, 1957, C. G. Glasscock-Tidelands Oil Company, a Delaware corporation, with its principal place

of business at Corpus Christi, Texas, (Operator) filed an application in Docket No. G-13781 for a certificate of public convenience and necessity authorizing it to sell natural gas in interstate commerce to Southern Natural for resale from volumes produced from certain lands owned and operated by it in connection with others, located in the East Bayou Pigeon Field, Iberia Parish, Louisiana and more fully described in the application.

On September 5, 1957, Berkshire Oil Company, a Texas Corporation, and R. R. Frankel, of Houston, Texas, filed a joint application in Docket No. G-13224 for a certificate of public convenience and necessity authorizing them to sell natural gas in interstate commerce to Southern Natural for resale from volumes produced from lands leased or controlled by them in the Bayou Pigeon Field, Iberia Parish, Louisiana, as more fully described in the application.

The additional supplies of gas to Southern Natural will be made available by reason of the proposed construction and operations of the proposed facilities and such supply is reasonably adequate to justify the proposed construction.

The applications of the independent producers and the contracts between Southern and such independent producers submitted with the applications indicate that the initial prices proposed to be paid by Southern thereunder will be 22.8¢ per Mcf. These proposed prices will be among the highest to be paid for natural gas produced in the Southern Louisiana area. In view of this fact we will by subsequent order institute investigations pursuant to Section 5 (a) of the Natural Gas Act as to the reasonableness of the prices proposed to be paid to the following applicants: Aluminum Company of America; Howell & Howell; Sohio Petroleum Company; Shell Oil Company; Continental Oil Company; John W. Mecom; Lyons & Logan;

C. G. Glasscock-Tidelands Oil Company, *et al.* and Berkshire Oil Company and R. R. Frankel.[1]

Pursuant to due notice, a public hearing was commenced in Washington, D. C., on April 7, and concluded, after a recess on April 10, 1958, respecting the matters involved in and the issues presented by the applications.

A petition for leave to intervene was filed by Gas Gathering Corporation on April 1, 1958 and thereafter on April 4, 1958 Notice of Withdrawal of the petition was filed. On April 3, 1958, a protest to the granting of the applications in the proceedings was filed by the Mayor and City Attorneys of Tuscaloosa, Alabama, and on April 4, 1958, a petition for leave to intervene was filed by the same parties. On April 7, 1958 notice of withdrawal of the protest and petition for leave to intervene was filed by Tuscaloosa's Mayor and City Attorneys. Southern Natural filed an answer to the petition of Tuscaloosa on April 7, 1958; but no person appeared to represent either of the interveners. Accordingly, there being no protestants or interveners at the hearing, staff counsel moved at the hearing that the intermediate decision procedure be omitted and the Commission render a decision pursuant to Section 1.30 (c) (1) of the Commission Rules of Practice and Procedure.

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation with its principal place of business at Birmingham, Alabama, is a "natural gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The facilities hereinbefore described are proposed to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdic-

[1] Investigations pursuant to Section 5 (a) of the Natural Gas Act have been initiated in connection with Tidewater Oil Company and The California Company.

tion of the Commission, as integral parts of Southern Natural's existing pipeline system and the construction and operation thereof by Southern Natural are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) All of the applicants above named, except Southern Natural, upon commencement of the sales proposed herein, will be engaged in sales of natural gas in interstate commerce for resale, for ultimate public consumption, subject to the jurisdiction of this Commission, and therefore each of them will be a "natural gas company" within the meaning of the Natural Gas Act.

(4) The sales of natural gas hereinbefore described, and as more fully described in the Applications on file herein by said Applicants, excepting Southern Natural, will be made in interstate commerce, subject to the jurisdiction of this Commission, and such sales by them together with the operation of any facilities, subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) All Applicants hereinabove named are able and willing properly to do the acts and perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission hereunder.

(6) The proposed construction and operation of the facilities by Southern Natural, and the proposed sales of natural gas by the other Applicants named herein together with the operation of any facilities subject to the jurisdiction of the Commission necessary therefor are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(7) Public convenience and necessity requires that: (a) the general terms and conditions set forth in paragraphs

(a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of the Commission Regulations Under the Natural Gas Act (18 CFR 157.20) should attach to the certificates issued to Southern Natural and to the exercise of the rights granted thereunder; (b) the time within which construction of the facilities authorized by this order shall be completed and in actual operation should be fixed at nine months from the date of issuance of this order; (c) an adequate plan of financing of the proposed construction which is satisfactory to the Commission shall be filed before the construction commences.

(8) Staff counsel at the close of the hearing made the request for the omission of the intermediate decision procedure as provided by Section 1.30 (c) of the Commission's Rules of Practice and Procedure. There being no opposition to the said request by any party of record, and, not having been denied by the Commission, is granted, pursuant to Section 1.30 (c) (1) of the said Rules.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same hereby are issued to Southern Natural Gas Company to construct and operate the facilities hereinbefore described, and as more fully described in the applications in Docket Nos. G-13082 and G-13379 in this proceeding for the transportation and sale of natural gas as therein set forth, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) Certificates of public convenience and necessity be and are hereby issued to all other applicants listed herein, excepting Southern Natural, upon the terms and conditions of this order, authorizing the sales by them of natural gas in interstate commerce for resale, together with the operation of any facilities, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(C) The certificates issued to Southern Natural shall be accepted in writing, and under oath, by a responsible official of Southern Natural and the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of the Commission's Rules of Practice and Procedure shall attach to the issuance of the certificates granted under paragraph (A) hereof, and to the exercise of the rights granted thereunder.

(D) Southern Natural shall submit to the Commission for its approval a satisfactory plan of financing of the costs of construction proposed prior to its undertaking of construction of any of the facilities authorized hereby.

(E) The certificates issued to Applicants herein, excepting Southern Natural, shall be deemed accepted and of full force and effect, unless refused in writing and under oath by them within 30 days from the issuance of this order.

(F) The time within which the facilities hereby authorized to Southern Natural shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Rules of Practice and Procedure is hereby fixed at nine months from the date on which this order issues.

(G) The certificates issued to all the Applicants named herein are not transferable and shall be effective only so long as they continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations and orders of the Commission thereunder.

(H) The requests for withdrawal of the petitions to intervene and the protest filed by Gas Gathering Corporation and the Mayor and City Attorneys of Tuscaloosa, Alabama, are granted and the petitions and protests are stricken from the files.

(I) The grant of the certificates to the Applicants listed herein, excepting Southern Natural, shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Section 154 of the Commission's Rules and Regulations thereunder requiring the filing of rate schedules for the services herein authorized, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against them. Further, our action in this proceeding shall not foreclose or prejudice any future proceedings or objections relating to the operation of any price or related provision in the gas purchase contracts herein involved.

By the Commission. Chairman Kuykendall and Commissioner Stueck concur in the result for the reasons stated in their separate statements issued with Opinion No. 309, *In the Matters of Seaboard Oil Company, Operator, et al.* Docket Nos. G-11970, *et al.*

Commissioner Connole dissenting.

JOSEPH H. GUTRIDE
Joseph H. Gutride,
Secretary.

APPENDIX

[1] W. L. Pickens, Trustee, 25 percent interest; Howell & Howell, formerly Howell, Holloway & Howell (Operator) 46.91186 percent interest; Magna Oil Corporation, 28.00814 percent interest.

[2] Sohio Petroleum Company (Operator) 48.63 percent interest; Rycade Oil Corporation, 6.95 percent interest; Howell & Howell, formerly Howell, Holloway & Howell, 44.42% interest.

[3] Shell Oil Company (Operator) 80% interest; Continental Oil Company, 20% interest.

[4] John W. Mecom (Operator), 50% interest; Freeport Oil Company, 50% interest.

[5] Lyons & Logan, a co-partnership, consisting of C. H. Lyons, Sr., C. H. Lyons, Jr., Hall M. Lyons, G. L. Logan, E. L. Hilliard, G. F. Abendroth and J. P. Palmer (Operators), W. H. Cocke, Sr., and W. H. Cocke, Jr., (non operators).

[6] C. G. Glasscock-Tidelands Oil Company, Petroleum, Inc., Don C. Wiley and Buel Humphreys, Jr.

DIGBY, Commissioner, *concurring:*

I concur in the order granting a certificate of public convenience and necessity to sell natural gas. I object to any reference in the order concerning the issuance of a certificate of public convenience and necessity for the facilities of the independent producer or gatherer of gas.

A certificate of public convenience and necessity is neither required nor properly issued for construction and operation of facilities of a producer or gatherer. The action of a majority of this Commission issuing a certificate for facilities is improper for it represents an assertion of power denied to us by Congress.

We have recognized the absence of power over facilities when, in Order No. 174 and Order No. 174-A, we failed to provide any procedure whereby application could be made for a certificate authorizing their construction and operation. We did promulgate procedural rules to enable filing of applications for certificates authorizing a sale or transportation. There was not even a suggestion that at

some later time we would authorize or require authorization for construction and operation of facilities.

The action heretofore taken, insofar as it made no provision with respect to facilities, was wholly consistent with the declarations of the Supreme Court in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Company*, 337 U. S. 498, 505; *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U. S. 581, 598; *Interstate Natural Gas Company* v. *Federal Power Commission*, 331 U.S. 682, 690-691, and *Phillips Petroleum Company* v. *State of Wisconsin*, 74 Sup. Ct. 794, 797-798. The language of the Court in these cases is clear and unambiguous. In *Federal Power Commission* v. *Panhandle Eastern Pipe Line Company*, *supra*, the Court stated that the "natural and clear meaning" of production or gathering contained in Section 1(b) of the Act encompassed "the producing properties and gathering facilities of a natural-gas company." In *Colorado Interstate Gas Co.* v. *Federal Power Commission*, *supra*, the Court stated that the production or gathering exemption applies to the "physical activities, facilities and properties used in the production and gathering of natural gas." In *Interstate Natural Gas Company* v. *Federal Power Commission*, *supra*, the Court stated that effect must be given to the exemption of producing and gathering, and indicated clearly that facilities, properties and activities of a producer and gatherer were exempted. The Court, in *Phillips Petroleum Company* v. *State of Wisconsin*, *supra*, held only that a sale in interstate commerce for resale was not within the exemption of Section 1(b). The discussion with respect to facilities and the recitation of the above-cited cases represents clear recognition of the intended scope and effect of the exemption as regards facilities.

The issue to be resolved is whether the Natural Gas Act requires that a certificate of public convenience and necessity issue for construction and operation of the fa-

cilities necessary to effect a sale by a producer or gatherer in interstate commerce for resale. The issue is not whether a sale of gas in interstate commerce for resale can be made without facilities. It cannot be doubted that facilities necessary to effect a sale of natural gas in interstate commerce are facilities used in interstate commerce. Recognition of this fact cannot, however, create power in this Commission to issue, much less to require, certificates authorizing construction and operation of such facilities.

CONNOLE, Commissioner, *dissenting:*

This is another instance in which sales to Southern Natural from reserves located partly on-shore and partly off-shore in Louisiana are certificated at prices at an all-time high level for sales of natural gas from the reserves in the southwest. The record contains no testimony or evidence supporting why the public convenience and necessity requires the sale at this price. For reasons I have set forth before in other proceedings, including the strikingly similar order in *Re Southern Natural Gas Company, et al.*, G-11234, et al., issued July 12, 1957, and in the recent order in *Re Seaboard Oil Company, Operator, et al.*, G-11970, et al., issued March 31, 1958, I am unable to associate myself with the majority order.

Incidentally, my participation in the order granting certificates in part of the applications involved in this sale (*Re Southern Natural Gas Company, et al.*, in G-13203, et al., issued March 17, 1958) was the result of error and oversight on my part. I specifically disavow my participation therein by this separate statement.

.....

WILLIAM R. CONNOLE,